

**OPINION
45-21**

June 7, 1945 (OPINION)

APPROPRIATIONS

RE: Sec. 54-2710 Applies Only to Maintenance and Not to Specific Projects

Your letter of recent date with reference to appropriations made by the 1945 legislature for the experiment stations at Dickinson and Minot has been duly received and contents noted.

House Bill 203, which is Chapter 44 of the 1945 Session Laws, makes provision for the establishment of an addition to the Dickinson Agricultural Experiment Station to be selected by the State Board of Higher Education under the supervision and control of the North Dakota Agricultural College, and provides that the enlarged agricultural experiment station shall be under the jurisdiction of the State Board of Higher Education.

Section 5 of the Act makes an appropriation of \$80,000 and such income as may be derived from the agricultural operations of said experiment station for the purchase of the land described therein, together with the improvements situated thereon, and for the maintenance and support of said station from the date of its establishment to June 30, 1945 and throughout the biennium beginning July 1, 1945. The Act is an emergency measure.

House Bill 66, which is Chapter 48 of the 1945 Session Laws, provides for the creation and establishment of an agricultural experiment station and state seed farm to be located at or near Minot in Ward County, under the supervision and control of the North Dakota Agricultural College and under the supervision and direction of the Agricultural Experiment Station Director of the North Dakota Agricultural College. The land for such agricultural experiment station has been donated to the State of North Dakota for such purposes. The experiment station and said farm shall be under the jurisdiction of the State Board of Higher Education.

The Act provides for an appropriation of \$40,000 from the State Treasury, and such income as may be derived from the agricultural operations of the said experiment station, to be used for the maintenance and support of said station from the date of its establishment to June 30, 1945 and throughout the biennium beginning July 1, 1945. The Act is an emergency measure.

The question you present is whether Section 54-2710 of the North Dakota Revised Code of 1943, which provides that twenty-five per cent of an appropriation shall be available at the beginning of the fourth quarter of a biennium, is applicable to the appropriations made for these two experiment stations.

The appropriation made by Chapter 44 supra is for the purchase of 632 acres, more or less, of Section 5, Township 139, Range 96, Stark County, or other suitable and adequate acreage selected by the Board of Higher Education together with the improvements situated thereon

and for the maintenance and support of said station from the date of its establishment to June 30, 1945 and throughout the biennium beginning July 1, 1945.

The land for the Minot experiment station is donated to the State. The appropriation is made for the maintenance and support of said station from the date of its establishment to June 30, 1945 and throughout the biennium beginning July 1, 1945.

Section 54-2710 supra provides that seventy-five percent of the total of all appropriations and of each separate item thereof made by the legislative assembly for the maintenance of any state institution, department, board, commission or bureau for the biennium shall become available on the first day of July next succeeding the enactment by the legislative assembly, and the remaining twenty-five percent of any such appropriation shall be available only at the beginning of the fourth quarter of the biennium. Said section further provides that the term "maintenance" shall not apply to nor include monies appropriated for the payment of the cost of any buildings or equipment or for making improvements and repairs to buildings and grounds.

In considering the appropriation for the Dickinson Experiment Station in the light of the provisions of Section 54-2710, it is clear that the purchase price of the land for the station, together with the improvements and equipment thereon, is not subject to the provisions thereof since it is an obligation that is due and payable at a certain time and must therefore be paid in one sum. Section 54-2710 applies only to maintenance and does not include monies appropriated for the payment of the cost of buildings, equipment or for making improvements and repairs to buildings and grounds.

What we have said with reference to the Dickinson Experiment Station applies also to the Minot Station. The purposes for which the appropriation was made for the Minot Experiment Station are not as clearly stated as the purposes for the Dickinson Station. It provides for an appropriation of \$40,000, and such income as may be derived from the agricultural operations of said station, for the maintenance and support of said station, etc. The reason for this language was undoubtedly due to the fact that the land for this station was donated, but it is found that the buildings and equipment thereon are in need of repairs, and that additional equipment is necessary to put the station in proper condition to operate as an experiment station as intended by the legislative act creating it, which was an emergency measure. It was therefore contemplated that the station should be established forthwith so that its operations could be commenced at the earliest possible time.

It is the opinion of this office, therefore, that Section 54-2710 does not apply to any sum of money which may be necessary for the purpose of repairing buildings and equipment and for the purchase of necessary additional equipment. Said statute would apply only to the expense of maintenance after the station has been put in condition to carry on the operations intended by the statute creating it.

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